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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

UNITED FINANCIAL CASUALTY
COMPANY, a foreign insurer,

Plaintiff,

v.

MELBIN QUEZADA CARRERA, an
individual,

Defendants.

Case No. 2:23-cv-354

**COMPLAINT FOR
DECLARATORY RELIEF**

United Financial Casualty Company (UFCC) submits the following
Complaint for Declaratory Relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P.
57.

I. PARTIES

1 1. UFCC is a foreign insurer organized under the laws of the State of
2 Ohio with its principal place of business in the State of Ohio.

3 2. Defendant Melbin Quezada Carrera is a resident and citizen of the
4 state of Washington.
5

6 **II. JURISDICTION AND VENUE**

7 3. Jurisdiction is properly before this Court pursuant to 28 U.S.C. § 1332
8 et seq., as complete diversity exists among the parties and the amount in
9 controversy exceeds \$75,000.

10 4. This Court has jurisdiction over this Declaratory Judgment action
11 pursuant to 28A U.S.C. § 2201 because there is an actual and justiciable
12 controversy between the parties with respect to the existence of insurance coverage
13 under the Policy of insurance issued by UFCC. A judicial determination and
14 declaration of the rights and obligations of the parties is necessary and appropriate
15 at this time because UFCC has no adequate remedy allowed to resolve the current
16 controversy.
17

18 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as this
19 action involves a dispute over the application of insurance coverage under policies
20 written out of Washington, events and omissions which give rise to this claim
21 occurred in this district, and because Defendant is subject to this Court for personal
22 jurisdiction.
23

III. FACTUAL BACKGROUND

A. The Subject Loss

6. This claim arises out of a loss that occurred on March 11, 2022, involving three (3) vehicles in Warden, Washington.

7. Upon information and belief, at the time of the loss described herein, Defendant was an employee of Alfonso Hernandez. Hernandez owns and operates a construction business in Pasco, Washington.

8. UFCC issued a Washington Commercial Auto Policy of insurance to Alfonso Hernandez, policy number 01507436-004 (hereinafter, the “UFCC Policy”). The UFCC Policy was in effect from December 18, 2021, to June 18, 2022.

9. On March 11, 2022, Jorge Gomez-Acevedo was driving a 2002 Chevrolet Silverado (the “Silverado”) owned by Alfonso Hernandez. The Silverado was traveling southbound on SR17 approaching Road 10 SE.

10. Defendant and non-party Oscar Farias Zapeda were passengers in the Silverado being driven by Gomez-Acevedo.

11. A 2016 Toyota Camry (the “Camry”) was also traveling southbound in the lane next to the Silverado.

12. A 2021 Kenworth Semi Truck (the “Semi”) was traveling northbound on SR17 approaching Road 10 SE.

1 13. The Camry stopped to wait for a break in traffic to turn left on to Road
2 10 SE.

3 14. The Silverado failed to stop in time and attempted to swerve left
4 which caused it to collide with the rear of the Camry.
5

6 15. The Silverado was then propelled into the northbound lane and was
7 struck by the Semi.

8 16. This incident caused injuries to all occupants of the Silverado and
9 resulted in a death of passenger Farias Zapeda.

10 17. To date, UFCC has not been provided with any evidence regarding
11 the employment status of all occupants of the Silverado at the time of the subject
12 loss.
13

14 18. Upon receiving notice of the subject loss on May 16, 2022, UFCC
15 promptly opened a claim and began its claims investigation.

16 19. On October 16, 2022, January 3, 2023, and February 9, 2023, UFCC
17 sent letters to Quezada Carrera requesting he contact UFCC so that it could
18 complete its investigation and resolve the claim.
19

20 20. On March 3, 2023, UFCC received a letter advising that Quezada
21 Carrera was represented by counsel. The letter further stated that Quezada Carrera
22 was making a claim for injuries arising out of the subject loss.

23 21. On March 10, 2023, UFCC received an additional letter from Counsel

1 for Quezada Carrera, responding to UFCC’s February 9, 2023, letter. The letter
2 stated that UFCC’s investigation was “premature” and that Quezada Carrera would
3 not be cooperating with UFCC’s investigation or submitting to an examination until
4 “liability is settled.”

5
6 22. On or around March 10, 2023, UFCC agreed to defend Hernandez and
7 Gomez-Acevedo subject to a Reservation of Rights with regard to the Quezada
8 Carrera claim.

9 23. UFCC is currently defending Hernandez and Gomez-Acevedo
10 pursuant to an express reservation of rights.

11 24. On August 10, 2023, Quezada Carrera filed suit against Gomez-
12 Acevedo, entitled *Melbin I. Quezada-Carrera v. Jorge Gomez Acevedo*, Superior
13 Court of Washington for Franklin County, Case No. 23-2-50725-11 (the
14 “Underlying Lawsuit”)

15 25. The Underlying Lawsuit alleges that Gomez-Acevedo failed to
16 exercise reasonable care, as the driver of the Silverado, at the time of the subject
17 loss.
18

19 26. The Underlying Lawsuit further alleges that Gomez-Acevedo is the
20 only “at-fault” entity with regard to the subject loss.
21

22 27. An August 15, 2023, correspondence from counsel for Quezada
23 Carrera advised UFCC of the Underlying Lawsuit and stated that Quezada Carrera

1 had requested UFCC open an Underinsured Motorist claim in connection with the
2 subject loss.

3 28. UFCC promptly opened a UIM claim in response to Defendant
4 Quezada Carrera's request.

5
6 29. Based upon the Complaint filed in the Underlying Lawsuit and the
7 August 15, 2023 letter from Defendant Quezada Carrera's counsel, it appears that
8 Defendant Quezada Carrera is asserting he is entitled to UIM benefits because the
9 UFCC Policy issued to Alfonso Hernandez was insufficient to cover Defendant
10 Quezada Carrera's damages.

11 IV. THE UFCC POLICY

12 A. Identification of the UFCC Policy

13
14 30. UFCC issued a Washington Commercial Auto Policy of insurance to
15 Defendant Hernandez, policy number 01507436-004 (hereinafter, the "UFCC
16 Policy"). The UFCC Policy was in effect from December 18, 2021, to June 18,
17 2022.

18 31. The Policy contains Form 6912 and includes a single liability limit of
19 \$1,000,000 per occurrence for Bodily Injury and Property Damage.

20 B. Provisions of the UFCC Policy

21 32. The Policy contains the following Underinsured Motorist Coverage
22 Endorsement:
23

1 Except as specifically modified in this endorsement, all
2 provisions of the Commercial Auto Policy apply.

3 **We** agree with **you** that the insurance provided under **your**
4 Commercial Auto Policy, and related endorsements, is
modified as follows:

5 **INSURING AGREEMENT—UNDERINSURED**
6 **MOTORIST BODILY INJURY COVERAGE**

7 Subject to the Limits of Liability, if **you** pay the premium
8 for Underinsured Motorist Bodily Injury Coverage, **we**
9 will pay for damages, other than punitive or exemplary
10 damages, which an insured is legally entitled to recover
because of **bodily injury**:

- 11 1. sustained by an **insured**;
12 2. caused by an **accident**; and
13 3. arising out of the ownership, maintenance, or use of
an **underinsured auto**.

14 2852 WA (02/19) as modified by Z228 (01/11).

15 33. The Underinsured Motorist Coverage Endorsement contains the
16 following relevant definitions:

17 **ADDITIONAL DEFINITIONS**

18 When used in this endorsement, whether in the singular,
19 plural, or possessive:

- 20 1. **“Insured”** means:
21 a. if the named insured shown on the
22 **declarations page** is a natural
person:
23 (i) **you** or a **relative**;
(ii) any person **occupying your**

- 1 **insured auto** or a **temporary**
2 **substitute auto**; and
3 (iii) any person who is entitled to
4 recover damages covered by
5 this endorsement because of
6 **bodily injury** sustained by a
7 person described in (i) or (ii)
8 above; or

9 ...

- 10 6. **“Underinsured auto”** means an **auto** or
11 trailer of any type:
12 a. to which no bodily injury liability
13 bond or policy applies at the time of
14 the **accident**;
15 b. to which a bodily injury liability
16 bond or policy applies at the time of
17 the **accident**, but the bonding or
18 insuring company:
19 (i) denies coverage; or
20 (ii) is or becomes insolvent;

21 ...

22 An **“underinsured auto”** does not include
23 any motorized auto or equipment:

- 1 a. **owned** by, furnished to, or available
2 for the regular use of **you** or, if the
3 named insured is a natural person, a
4 **relative**. However, this exclusion to
5 the definition of **underinsured auto**
6 does not apply to an **insured auto**
7 with respect to **bodily injury** to **you**
8 or, if the named insured is a natural
9 person, a **relative**;
10 b. **owned** by any governmental unit or
11 agency. However, this exclusion to
12 the definition of **underinsured auto**
13 does not apply if the governmental
14 entity is unable to satisfy a claim

- because of financial inability or its insolvency;
- c. designed mainly for use off public roads, while not on public roads;
- d. while being used as a residence or premises; or
- e. not required to be registered as a motor vehicle

2852 WA (02/19) as modified by Z228 (01/11).

34. The Underinsured Motorist Coverage Endorsement in the Policy contains the following exclusions:

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS ENDORSEMENT.

- 1. Coverage under this endorsement is not provided for **bodily injury** sustained by any person while using or **occupying**:
 - a. an **insured auto** without the express or implied permission of **you** or, if the named insured is a natural person, a **relative**;
 - ...
 - c. an **auto** or device of any type designed to be operated on the public roads that is **owned** by, furnished to, or available for the regular use of **you** or, if the named insured is a natural person, a **relative**, other than an **insured auto** or **temporary substitute auto**; or
 - ...

- 1
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- 7
2. Coverage under this endorsement will not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:
- a. Industrial Insurance Act of Washington (Washington Revised Code Title 51);
 - b. workers' compensation law; or
 - c. disability benefits law.

8 2852 WA (02/19) as modified by Z288 (01/11).

9 35. The Policy contains the following Worker's Compensation exclusion:

10 3. **Worker's Compensation**

11 Any obligation for which an **insured** or an insurer of that **insured**, even if one does not exist, may be held liable under the Industrial Insurance Act of Washington (Washington Revised Code Title 51), workers' compensation, unemployment compensation, disability benefits law, or any similar law.

12

13

14

15

16 5. **Employee Indemnification and Employer's Liability**

17 **Bodily injury to:**

- 18 a. An **employee** of any **insured** arising out of or within the course of:
- 19 (i) That **employee's** employment by any **insured**; or
 - 20 (ii) Performing duties related to the conduct of any **insured's** business; or
- 21
- 22 b. This exclusion applies to any obligation to share damages with or repay someone else who must pay damages because of the injury.
- 23

6912 (02/19) as modified by 4881 WA (02/19).

36. The UFCC Policy contains the following Fellow Employee exclusion:

6. **Fellow Employee**

Bodily injury to:

- a. a fellow **employee** of an **insured** injured while within the course of their employment or while performing duties related to the conduct of **your** business.
- b. the spouse, child, parent, brother, or sister of that fellow **employee** as a consequence of Paragraph a. above.

6912 (02/19).

37. The UFCC Policy also includes the following provision regarding duties in the event of an accident or loss:

DUTIES IN THE EVENT OF AN ACCIDENT OR LOSS

A person seeking coverage must:

1. cooperate with **us** in any matter concerning a claim or lawsuit;
- ...
3. allow **us** to take signed and recorded statements, including sworn statements and examinations under oath, which **we** may conduct outside the presence of **you**, a **relative**, or any person claiming coverage, and answer all reasonable questions **we** may ask as often as **we** may reasonably require;
4. promptly call **us** to notify **us** about any claim or lawsuit and send **us** any and all legal papers relating to any claim or lawsuit;

1 5. attend hearings and trials as **we** require;

2 ...

3 10. authorize **us** access to **your** business or personal
4 records as often as **we** may reasonably require.

5 6912 (02/19).

6 **V. THERE ARE ACTUAL AND JUSTICIABLE CONTROVERSIES AS**
7 **TO UFCC’S COVERAGE OBLIGATIONS**

8 38. The UFCC Policy provides coverage for damages, other than punitive
9 or exemplary damages, which an “insured” is legally entitled to recover from the
10 “owner” or operator of an “underinsured auto” because of “bodily injury” sustained
11 by an “insured,” caused by an “accident,” and arising out of the ownership,
12 maintenance, or use of an “underinsured auto.”

13 39. “Underinsured auto” is defined as an “auto” or trailer of any type to
14 which no bodily injury liability bond or policy applies at the time of the “accident”
15 or to which a bodily injury liability bond or policy applies at the time of the
16 “accident,” but the bonding or insuring company denies coverage or is or becomes
17 insolvent.
18

19 40. An “underinsured auto” does not include any motorist auto or
20 equipment owned by, furnished to, or available for the regular use of “you” or, if
21 the named insured is a natural person, a relative.
22

23 41. However, the exclusion to the definition of “underinsured auto” does

1 not apply to an “insured auto” with respect to “bodily injury” to “you” or, if the
2 named insured is a natural person, a relative.

3 42. Here, the named insured on the declarations page is Alfonso
4 Hernandez, a natural person, and the Silverado involved in the subject loss is listed
5 as an “insured auto” on the declarations page of the UFCC Policy.
6

7 43. There is an actual and justiciable controversy as to whether the
8 Silverado Jorge Gomez-Acevedo was driving at the time of the subject loss is
9 qualifies as an “underinsured auto” under the definitions in the UFCC Policy
10 because it was owned by Alfonso Hernandez.
11

12 44. The UFCC Policy excludes coverage under the Underinsured Motorist
13 Coverage Endorsement for “bodily injury” sustained by any person while
14 occupying an insured auto without the express or implied permission of “you” or,
15 if the named insured is a natural person, a “relative.”

16 45. There is an actual and justiciable controversy as to whether any of the
17 occupants of the Silverado at the time of the loss had express or implied permission
18 from Alfonso Hernandez to use or occupy the Silverado.
19

20 46. The UFCC Policy does not provide coverage under the Underinsured
21 Motorist Coverage Endorsement either directly or indirectly to benefit any insurer
22 or self-insurer under the Industrial Insurance Act of Washington, any workers’
23 compensation law, any disability benefits law, or any other similar laws.

1 47. There is an actual and justiciable controversy as to whether Defendant
2 Quezada Carrera was an employee of Alfonso Hernandez and whether they have
3 received benefits under the Industrial Insurance Act of Washington, any workers'
4 compensation law, any disability benefits law, or any other similar laws, pursuant
5 to their employment.
6

7 48. The UFCC Policy excludes coverage, including UFCC's duty to
8 defend, for any liability assumed by an insured in any contract or agreement, except
9 for an "insured contract" that was executed prior to the occurrence of any "bodily
10 injury."
11

12 49. There is an actual and justiciable controversy as to whether Defendant
13 Quezada Carrera's claims arise out of any liability that Alfonso Hernandez
14 assumed under an "insured contract" as that term is defined in the UFCC Policy.
15

16 50. The Policy excludes coverage, including UFCC's duty to defend, for
17 any obligation for which an insured or an insurer of that insured may be held liable
18 under the Industrial Insurance Act of Washington, workers' compensation,
19 unemployment compensation, disability benefits, or any similar law.
20

21 51. There is an actual and justiciable controversy as to whether any such
22 obligation exists under the Industrial Insurance Act of Washington, workers'
23 compensation, unemployment compensation, disability benefits, or any similar law
on the part of Alfonso Hernandez or an insurer of Alfonso Hernandez.

1 52. The Policy excludes coverage, including UFCC's duty to defend, for
2 "bodily injury" to an "employee," as that term is defined, of any insured arising out
3 of or within the course of the employee's employment by any insured or performing
4 duties related to the conduct of any insured's business.

5
6 53. There is an actual and justiciable controversy as to whether Defendant
7 Quezada Carrera and the other occupants of the Silverado were "employees" of
8 Alfonso Hernandez

9 54. There is an actual and justiciable controversy as to whether the
10 occupants of the Silverado were injured while within the course of that
11 employment, or while performing duties related to Alfonso Hernandez's business
12 at the time of the loss.

13
14 55. The Policy provides that failure to comply with the terms and
15 conditions of the Policy may preclude coverage if such failure to comply prejudices
16 UFCC's ability to investigate or defend the claims.

17 56. There is an actual and justiciable controversy as to whether
18 Defendants Quezada Carrera has complied with the terms and conditions of the
19 policy.

20
21 57. There is an actual and justiciable controversy as to whether UFCC
22 owes any defense or indemnity to Alfonso Hernandez under the UFCC policy.

23 58. UFCC reserves the right to assert any other exclusions or grounds for

1 which coverage for the claims asserted by Defendant Quezada Carrera may be
2 excluded under the UFCC Policy.

3 **VI. CAUSE OF ACTION FOR DECLARATORY RELIEF**

4
5 59. Pursuant to and in accordance with 28 U.S.C. § 2201, UFCC requests
6 that the Court grant declaratory relief in its favor and enter a judicial determination
7 that Defendant Carrera is not entitled to coverage under the policy of insurance
8 issued by UFCC to Alfonso Hernandez. UFCC further requests that the Court enter
9 a judicial determination that UFCC owes no defense and indemnity obligation to
10 Alfonso Hernandez and Jorge Gomez-Acevedo for any claims arising out of the
11 subject loss that are asserted against them by Defendant Carrera.
12

13 **VII. PRAYER FOR RELIEF**

14 UFCC, having alleged the foregoing, does now hereby pray for relief as
15 follows:

16 1. For a declaration that Defendant Carrera is not entitled to coverage
17 under the policy of insurance issued by UFCC to Alfonso Hernandez.

18 2. For a declaration that UFCC owes no defense obligation to Hernandez
19 and/or Gomez-Acevedo for any claims asserted against them arising from the
20 subject loss.
21

22 3. For a declaration that UFCC owes no indemnity obligation to
23 Hernandez and/or Gomez-Acevedo for any claims asserted against them arising

1 from the subject loss.

2 4. For all interest allowed by law.

3 5. For attorney fees and costs allowed by statute and law.

4 6. For other and further relief as the Court deems just and equitable.

5 DATED this 4th day of December 2023.

7 LETHER LAW GROUP

8 /s/ Eric J. Neal

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